EXHIBIT 453

Highly Confidential - Subject to Further Confidentiality Review

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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF OHIO

EASTERN DIVISION

- - -

IN RE: NATIONAL   :
PRESCRIPTION   :   MDL No. 2804
OPIATE LITIGATION   :
_____ :   Case No.
                           :   1:17-MD-2804
THIS DOCUMENT RELATES   :
TO ALL CASES   :   Hon. Dan A. Polster

- - -

Thursday, December 6, 2018

HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
CONFIDENTIALITY REVIEW

- - -

Videotaped deposition of JASON BRISCOE, held

at the offices of Cavitch, Familo & Durkin,

1300 East Ninth Street, Cleveland, Ohio, commencing at

9:05 a.m., on the above date, before Carol A. Kirk,

Registered Merit Reporter and Notary Public.

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1   30,000-foot.
2   You understand -- you've testified
3   repeatedly that DDM has a responsibility to
4   identify suspicious orders, right? We've gone
5   through what the systems are.
6   Prior to being shipped, what
7   system does DDM have in place to identify
8   suspicious orders prior to being shipped?
9   MR. JOHNSON: Objection.
10   A. Again, I would point to that --
11   the report that we just spent some time.
12   Q. The fat finger report?
13   A. The six-week average report.
14   MR. JOHNSON: Objection.
15   Q. So other than -- other than
16   confirming whether the purchase order is correct
17   from Ms. Strang to the pharmacist, is there any
18   system in place that DDM has to identify
19   suspicious orders before they were shipped?
20   A. No.
21   Q. All right. Let's turn the page
22   for me.
23   MR. JOHNSON: Exhibit 8?
24   MR. MOUGEY: Exhibit 8. Thank

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1   you.
2   Q. Now, would you agree with me that
3   both of the reports you just identified, the
4   six-week average and the controlled substance
5   order monitoring report, are both based on rigid
6   formulas?
7   MR. JOHNSON: Objection.
8   A. Would I agree that they're both
9   based on rigid --
10   Q. Rigid formulas.
11   A. No.
12   Q. Both of those reports, in order to
13   populate -- let me do it this way:
14   The orders that populate those
15   reports are both based on formulas, correct?
16   A. Yes.
17   Q. And both of those formulas are
18   rigid, correct?
19   A. "Rigid" meaning they're not fluid,
20   and they're not dynamic, and they're changing on
21   a regular basis?
22   Q. Yes.
23   A. That's correct.
24   Q. There's no statistical analysis

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1   that goes into either that -- a report that's
2   identified as an anomaly populating those
3   reports, correct?
4   A. No.
5   Q. It's essentially one's a six-week
6   average and one's a 52-week average, right?
7   A. Yes.
8   Q. All right. One's based on bottles
9   and the other is a confirmation of the purchase
10   order, right?
11   A. With the bottles, that's what --
12   the column that would -- the math is done on,
13   yes. But, again, there's granularity to all
14   NDCs within that family that would be displayed
15   with detail on that report.
16   Q. So on the second page of
17   Briscoe 8, the DEA relays in 2007 that
18   "Registrants that rely on rigid formulas to
19   define whether an order is suspicious may be
20   failing to defect suspicious orders."
21   Did I read that right?
22   A. You did.
23   Q. "For example, a system that
24   identifies an order as suspicious only if the

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1   total amount of a controlled substance ordered
2   during one month exceeds the amount ordered by
3   the previous month by a certain percentage or
4   more is insufficient."
5   Do you see that?
6   A. Yes.
7   Q. So as of 2007, the DEA is telling
8   registrants like DDM that comparing one month to
9   the next based on a certain percentage is
10   insufficient, correct?
11   A. Yes.
12   Q. And DDM continued to use that
13   formula comparing orders to previous months
14   despite the DEA's edict in this letter, correct?
15   MR. JOHNSON: Objection.
16   A. They were only components of our
17   SOMS, in that this report we recognized was not
18   precise enough -- I believe my words -- to have
19   it stand on its face. So, therefore, the
20   strength of our process involved the Tom Nameth
21   and Jason Briscoe review followed by due
22   diligence with the store, if necessary.
23   Q. But we just went through the fact
24   that neither of the policies that -- none of the

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Monday, January 7, 2019

HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
CONFIDENTIALITY REVIEW

- - -

Videotaped deposition of TOM NAMETH, held at

the offices of Cavitch, Familo & Durkin,

1300 East Ninth Street, Cleveland, Ohio, commencing at

9:03 a.m., on the above date, before Carol A. Kirk,

Registered Merit Reporter and Notary Public.

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1   correct?
2   A.   Yes.
3   Q.   Okay. And the next sentence says,
4   "Registrants are reminded that their
5   responsibility does not end merely with the
6   filing of a suspicious order report."
7   Correct?
8   A.   Mm-hmm.
9   Q.   Do you agree with that?
10   A.   Yes.
11   Q.   Do you agree with that?
12   A.   Yes.
13   Q.   Okay. And it says, "Registrants
14 must conduct an independent analysis of
15 suspicious orders prior to completing a sale to
16 determine whether the controlled substances are
17 likely to be diverted from legitimate channels."
18   Do you see that?
19   A.   Yes.
20   Q.   And that's what we looked at
21 earlier, which is similar to the language
22 regarding avoiding filling in advance, right?
23   A.   Yes.
24   Q.   Okay. And do you think that DDA

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1   did that -- DDM did that?
2   A.   We did not do a -- stopping an
3   order prior to sending it out, so prospectively,
4   no.
5   Q.   Okay. And, again, down below, it
6   says, "The regulation specifically states that
7   suspicious orders include orders of an unusual
8   size, orders deviating substantially from a
9   normal pattern and orders of an unusual
10 frequency."
11   Right?
12   A.   That's right -- that's correct.
13   Q.   And we saw that before, didn't we?
14   A.   Yes.
15   Q.   Okay. If you go down about
16 halfway through that paragraph, in the middle it
17 says, "The size of an order alone, whether or
18 not it deviates from a normal pattern, is enough
19 to trigger the registrant's responsibility to
20 report the order as suspicious."
21   Do you see that?
22   A.   Yes.
23   Q.   Okay. So that's saying that if
24 you have an order that's large, that's enough to

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1   trigger your duty to report as suspicious,
2   correct?
3   A.   That's what it states.
4   Q.   Okay. Did DDM do that?
5   A.   No.
6   Q.   All right. Second page. At the
7   top it says, "Registrants that rely on rigid
8   formulas to define whether an order is
9   suspicious may be failing to detect suspicious
10 orders."
11   Do you see that?
12   A.   Yes.
13   Q.   Would you agree that your rolling
14 12-month average report was generated by a rigid
15 formula?
16   A.   It was a set formula, yes.
17   Q.   Okay. And then it says, "For
18 example, a system that identifies orders as
19 suspicious only if the total amount of a
20 controlled substance ordered during one month
21 exceeds the amount ordered the previous month by
22 certain percentages or more is insufficient."
23   Do you see that?
24   A.   I do, yes.

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1   Q.   Okay. So this is saying that
2   DDM's system, which did exactly that, was
3   insufficient, correct?
4   A.   No. Our system was not just
5   that -- based on that particular situation.
6   Q.   Let's say -- okay. That's fair.
7   Let's say -- let's just take your report, your
8   rolling 12-month average report. You'd agree
9   that this is saying that if that report was all
10 you did, that it would be insufficient, correct?
11   A.   It says that during one month. I
12 mean, when you throw in the average of the
13 previous year, that's a little bit different
14 than what that states.
15   Q.   Correct. This system, one that
16 identified an order that was just bigger than
17 the last month, would actually be more sensitive
18 than yours, wouldn't it?
19   A.   I don't see how.
20   Q.   Well, okay. Let's just say --
21 let's just say we've got store 1 orders five
22 pills -- five bottles in December, right? And
23 then you order six bottles in January. That
24 would trigger a report like this, wouldn't it?

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Thursday, January 3, 2019

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Videotaped deposition of JILL A. STRANG, held

at the offices of Cavitch, Familo & Durkin,

1300 East Ninth Street, Cleveland, Ohio, commencing at

8:57 a.m., on the above date, before Carol A. Kirk,

Registered Merit Reporter and Notary Public.

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1   before they were fulfilled?
2   MR. JOHNSON: Objection.
3   Q.   I think you've already answered
4   this. I'm just asking you again. I probably
5   shouldn't be, but ...
6   A.   That's okay. I guess
7   suspicious -- when we're dealing with our
8   customers, which are our stores, knowing the
9   history of what we have -- sorry. No, they were
10   not suspicious. They were order errors and
11   treated as order errors and investigated. And I
12   did my due diligence.
13   Q.   And I'm not accusing you of not
14   doing anything. I'm just trying to understand
15   what you did.
16   A.   Right.
17   Q.   Okay. Okay. If you go to page --
18   the second page, at the top it says,
19   "Registrants that rely on rigid formulas to
20   define whether an order is suspicious may be
21   failing to detect suspicious orders."
22   Do you see that?
23   A.   Yes.
24   Q.   Okay. And the next sentence says,

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1   "For example, a system that identifies orders as
2   suspicious only if the total amount of a
3   controlled substance ordered during one month
4   exceeds the amount ordered the previous month by
5   a certain percentage or more is insufficient."
6   Do you see that?
7   A.   Yes.
8   Q.   And that more or less describes
9   your six-week average report, although with
10   different time frames, correct?
11   A.   Correct.
12   Q.   And so you'd agree that this is
13   saying that that six-week average report would
14   be insufficient to identify suspicious orders
15   under the regulations, correct?
16   MR. JOHNSON: Objection.
17   A.   Can you repeat that, please?
18   Q.   You agree that this sentence
19   describes a report similar to the six-week
20   average report, correct? I think you just said
21   that.
22   A.   It is based on the average, yes.
23   Q.   Okay. And so you'd agree that
24   this letter says that the six-week average

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1   report that was generated at DDM would be
2   insufficient to identify suspicious orders under
3   the regulations, correct?
4   MR. JOHNSON: Objection. Once
5   again, it says what it says.
6   MR. MULLIGAN: That's fine, Tim.
7   I'm just asking her the question.
8   BY MR. MULLIGAN:
9   Q.   Is this news to you?
10   A.   No, but I'm reading it as, is it
11   insufficient. Is our report insufficient.
12   Q.   Right.
13   A.   And I'm reading this to say,
14   during one month exceeds the amount ordered the
15   previous month. So I believe our six-week
16   average covers a six-week average.
17   Q.   Okay. So the only thing that
18   you've identified that's different between the
19   report they're sort of describing here and your
20   report is that yours covers two more weeks,
21   right?
22   A.   Yes.
23   Q.   Okay. But that report does
24   identify orders that exceed the history by a

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1   certain percentage; does it not?
2   A.   I didn't write it, but yes.
3   Q.   Okay. And the next sentence says,
4   "This system fails to identify orders placed by
5   a pharmacy if the pharmacy placed unusually
6   large orders from the beginning of its
7   relationship with the distributor."
8   Do you see that?
9   A.   Mm-hmm, yes.
10   Q.   Okay. And so what this -- this is
11   identifying a flaw in a report like that, which
12   is, it won't flag an order if the store already
13   has a pattern of ordering too much.
14   Does that make sense?
15   A.   And what is an unusually large
16   order?
17   Q.   Well, I don't know. But you would
18   agree with that, right, that the six-week
19   average report -- if the stores were ordering
20   more than they should and they continue that
21   pattern, then the six-week average report
22   wouldn't flag that store as engaging in any
23   suspicious activity, right?
24   A.   Correct.

39 (Pages 150 to 153)